IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.389/05

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 16th August, 2006

Heard Shri Sonkusare, learned counsel appearing on behalf of the appellants.

2. This appeal is directed against the Judgment and decree dated 11th April, 2005 passed by the First Ad hoc Additional District Judge, Nagpur in Regular Civil Appeal No. 213/98 dismissing the appeal filed by the appellants herein against the Judgment and decree dated 20th December, 1997 passed by the 12th Joint Civil Judge, Jr. Dn., Nagpur in Regular Civil suit No. 365/90. The appellants are the original defendants in the above suit against whom the plaintiffs filed the suit for injunction restraining them from constructing a road or making any encroachment over the dhura of the plaintiff bearing Survey No. 110/7 and 110/8 situated at Mouja Somalwada, Nagpur. The trial Court after analysing the evidence led by the parties held that the plaintiffs have proved their title and possession in respect of the suit property and consequently allowed the suit granting injunction against

the defendant. The appellate Court also concurred with the findings given by the trial Court and dismissed the appeal.

3. Mr. Sonkusary, learned counsel submits that both the courts below have erred in decreeing the suit and granting decree in faovur of the plaintiffs. According to the learned counsel after passing of the decree by the appellate Court the road has been constructed and, therefore, the impugned decree deserves to be quashed and set aside.

4 Having considered the submissions made by the learned counsel and having perused the Judgments passed by both the courts below, I find myself unable to accept the submissions made on behalf of the appellants. Firstly, the finding recorded by the trial court that the plaintiffs have proved their title to the suit property which has been confirmed by the appellate Court cannot be faulted inasmuch as the same is based upon proper appreciation of the evidence led by the parties. In so far as the submission made by the learned counsel that the road has been constructed after passing of the decree by the appellate Court is concerned, in my opinion, the same would not justify the setting aside of the decree passed by the appellate Court. The appellate court was justified in passing the impugned decree which was based upon the

evidence led by the parties. Therefore, even if the statement made by the learned counsel that now the road has been constructed is accepted, the same will not vitiate the decree passed by the appellate court. In my opinion, the findings given by both the courts below are not perverse warranting interference in second appeal. In my opinion, no substantial question of law is involved. Hence, the appeal is summarily rejected.

Judge

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